

### REMARKS

In the Office Action, the Examiner allowed claims 4, 13, 21 and 37 and objected to claims 3, 12 and 20 as being dependent upon a rejected base claim, but indicated that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 1, 2, 5-11, 14-19, 22-36 and 38-47 are rejected. Claims 1-47 are pending.

Applicants acknowledge and appreciate that the Examiner has reviewed Applicants' previous arguments and has found them persuasive and, therefore, have withdrawn the previous rejection.

The Examiner rejected claims 42-44 under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 6,245,584 (*Marinaro*). Applicants respectfully traverse this rejection.

The Examiner rejected claims 42-45 based upon faulty reasoning using the disclosure of *Marinaro*. *Marinaro* merely discloses printed lines, which the Examiner alleges can be a grid. However, *Marinaro* clearly does not disclose or suggest anything remotely relating to a grid having any type of openings, which is properly described and is decipherable by those skilled in the art having benefit of the present patent application. *Marinaro* clearly does not disclose any type of openings in the grid, as called for by claims 42-44 of the present invention. The Examiner mistakenly cites reference number 34 of Figure 5 in *Marinaro* and argues that this amounts to a grid having openings. This is clearly erroneous. The "image" 34 merely refers to "visible images 34" formed on the wafer. See, Figure 5, column 4, lines 14-16. There no disclosure or suggestion that these images are grids having opening.

The disclosure in *Marinaro* merely refers to a wafer after development with a printer 12 having identical visible images 34 that are formed on the wafer. *See*, column 4, lines 10-16. The images 34 are merely visible images and are not grids having openings. Therefore, the Examiner does not even prove that *Marinaro* even discloses a grid, much less show that *Marinaro* discloses grids with openings. Hence, the Examiner misapplies the disclosure of *Marinaro*, which does not even disclose a grid, much less a grid with openings. Accordingly, all of the elements of claims 42-44 of the present invention is not taught, disclosed, or suggested by *Marinaro*.

The Examiner rejected claims 1, 2, 5-11, 14-19, 22-36, 38-41 and 45-47 under 35 U.S.C. § 103(a) as being unpatentable over *Marinaro*. Applicants respectfully traverse this rejection.

Applicants respectfully assert that claim 1 is not made obvious by the disclosure of *Marinaro*. Applicants respectfully assert that the Examiner admitted that *Marinaro* does not disclose determining a dimension of a grid based on the reflection profile element of claim 1. To make up for this deficit, the Examiner then uses an obviousness argument to allege that this element is made obvious by *Marinaro*. However, the Examiner has offered no evidence to support such an assertion; the Examiner merely offered an unsupported conclusory statement to support his arguments. Therefore, Applicants respectfully assert that this rejection is inappropriate.

Further, there is no disclosure in *Marinaro* to suggest or make obvious that the dimension of a grid, based on a reflection profile is determined. In fact, *Marinaro* teaches away from determining the dimension of the grid based on the reflection profile. *Marinaro* is directed to detecting an adjustment error based on images to have color gradient resulting from uneven

diffraction grating patterns of the visible images. *See* column 4, lines 27-31. The adjustment error is detected based upon a recognizable color gradient that is related to a particular type of error. *See* column 4, lines 32-33. Error such as the tube adjustment error in a printer 12, which causes a lateral color gradient, is detected in *Marinaro*. *See* column 4, lines 34-36. *Marinaro* discusses that if the grid structures are identical and even, then no color gradient or visible abnormality is detected, and therefore, no errors are deemed to be determined. *See* column 4, lines 48-50. Therefore, there is no disclosure in *Marinaro* regarding determining the dimension of the grid. Contrary to the Examiner's suggestion that detecting abnormalities, such as evenness or abnormalities of images, allegedly relates to determining a dimension is completely false since only the color gradient is analyzed. *Marinaro* makes no suggestion as to any type of a dimension-measurement of a grid. Those skilled in the art would not find it obvious to take a logical leap from color gradients analysis, to determine a dimension of a grid. The Examiner offers no support in the cited prior art or any other evidence to support an assertion that it would be obvious upon a reading of *Marinaro* that determining a dimension of the grid would be determined. Contrary to the Examiner's suggestion, only the color gradient is detected. Therefore, *Marinaro* does not make obvious all of the elements of claim 1 of the present invention

Claims 2, 6, 11, 15, 19, 23 call for determining a dimension of the grid based upon a reflection profile, which are elements not taught or made obvious by *Marinaro* for at least the reasons cited above. Additionally, claim 27 calls for a metrology tool comprising a data processing unit for determining a dimension of the grid based upon a reflection profile, which are elements not taught or made obvious by *Marinaro* for at least the reasons cited above. Claims 32, 38, 40, and 41 call for a metrology tool comprising a data processing unit that is adapted to

determining a dimension of a grid based on a reflection profile, which are elements that are not taught or made obvious by *Marinaro* for at least the reasons cited above. Additionally, claim 45 calls for a metrology tool comprising means for determining a dimension of the grid based upon a reflection profile, which are elements not taught or made obvious by *Marinaro* for at least the reasons cited above. Therefore, claim 45 is also allowable for at least the reasons cited above. Therefore, independent claims 1, 2, 6, 11, 15, 19, 23, 27, 32, 38, 40, 41, and 45 are allowable for at least the reasons cited herein.

Independent claims 1, 2, 6, 11, 15, 19, 23, 27, 32, 38, 40, 41, and 45 are allowable for at least the arguments presented herein. Further, dependent claims 3, 5, 7, 8, 9, 10, which depend from claim 1; dependent claims 12, 14, 16, 17, 18, which depend from claim 11; dependent claims 20, 22, 24-26, which depends from claim 19; dependent claims 28-31, which depends from claim 27; dependent claims 33-36, and 39, which depend from claim 32; and dependent claims 46-47, which depend from claim 45 are all also allowable for at least the reasons cited herein.

Applicants acknowledge and appreciate that the Examiner has allowed claims 4, 13, 21 and 37. Applicants also acknowledge and appreciate that the Examiner has indicated that claims 3, 12, and 20 contain allowable subject matter. However, in light of the discussions provided herein, Applicants respectfully assert that all claims, 1-47, of the present invention, are allowable for at least the reasons cited herein. Further, the Applicants respectfully assert that the Examiner withdraw the finality of the present office action and provide a Notice of Allowance allowing claims 1-47 of the present invention.


Reconsideration of the present application is respectfully requested.

In light of the arguments presented above, Applicants respectfully assert that claims 1-47 are allowable. In light of the arguments presented above, a Notice of Allowance is respectfully solicited.

In view of the remarks set forth herein, the application is believed to be in condition for allowance and notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the **Examiner is requested to contact the undersigned attorney at (713) 934-4069** with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,  
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